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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,668	07/02/2003	Gunter Holzner	81455-5560	7260
28765	7590	02/28/2006	EXAMINER	
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006			LAMM, MARINA	
			ART UNIT	PAPER NUMBER

1616

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/613,668	HOLZNER ET AL.	
	Examiner	Art Unit	
	Marina Lamm	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-14, 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-14, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of the response filed 11/21/05. Claims pending are 1-7, 10-14, 23 and 24.

Claim Rejections - 35 USC § 112

1. The rejection of Claims 2, 10 and 24 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, is maintained for the reasons of the record.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. The rejection of Claims 1-6, 11, 13, 23 and 24 under 35 U.S.C. 102(e) as being anticipated by Murphy et al. (US 6,555,098) is maintained for the reasons of the record.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. The rejection of Claims 7, 10, 12 and 14 under 35 U.S.C. 103(a) as being unpatentable over Murphy et al. (US 6,555,098) is maintained for the reasons of the record.

Response to Arguments

6. Applicant's arguments filed 11/21/05 have been fully considered but they are not persuasive.

With respect to the rejection under 35 U.S.C. 112, second paragraph, the Applicants argue: "Rather than being undefined, that term signifies a well known, clear and distinct, specific class of chemical compounds. A skilled artisan and every chemist for that matter knows what compounds are encompassed by this term and what compounds are not." See p. 2 of the reply. In response, even if these compounds are known, the scope of the claim is uncertain since not all, and most likely, only very limited number of chlorinated hydrocarbons may be suitable for use in the perfuming or flavoring microcapsules of the instant claims.

With respect to the 102(e) rejection over Murphy et al., the Applicants argue: "Murphy discloses a coating, rather than a spray dried microcapsule comprising both a fireproofing agent and fragrance ingredient. Claim 1 differs from the entire teaching of Murphy in another point. Present claim 1 claims a spray-dried microcapsule comprising both, a perfuming (or flavoring) ingredient as well as a fireproofing agent. The capsules of Murphy are not spray dried. The text position cited in the office action exclusively refers to the bicarbonate powder as such, not yet being coated on the perfuming ingredient." See p. 3 of the reply. In response, Murphy et al. teach deodorant products containing sodium bicarbonate and 0.1-20% of a fragrance ingredient encapsulated into a water-soluble or **water-insoluble polymer** as discussed before. When a water-

insoluble polymer is used for the encapsulation, a surface coating of the polymer preferably contains 5-30% of a particulate filler, such as sodium carbonate. The preferred coating procedure of Murphy et al. includes spray-drying of the aqueous dispersion or emulsion of the coating polymer and bicarbonate powder. See col. 2, lines 55-65. Further, the reference explicitly teaches the mixture of the bicarbonate powder and a fragrance powder can be polymer-coated as well. See col. 2, lines 37-41. Thus, one skilled in the art would clearly envisage the following embodiment of the Murphy et al. reference: the bicarbonate powder is pre-blended with the fragrance powder, the mixture is dispersed or emulsified in an aqueous medium, which contains a water-insoluble polymer and 5-30% of a particulate water-extractable filler, such as sodium carbonate recited in the instant claims. The resultant dispersion or emulsion is atomized and spray-dried to provide water-insoluble polymer-encapsulated bicarbonate powder-fragrance mixture, which contains sodium carbonate.

Further, the Applicants argue: "Also, the text of the general description as well as the examples of Murphy do not disclose a single, spray-dried microcapsule which is contains both the fragrance ingredient as well as a fireproofing agent. To the contrary, Murphy teaches coating of fragrance crystallites with bicarbonate powder, the coating solution containing a polymer ingredient. The coated crystallites of Murphy are thus totally different from the spray dried microcapsules of the present invention, notably also in terms of intersectional structure." See p. 4 of the reply. In response, the reference clearly teaches that bicarbonate power can be pre-blended with fragrance

powder and the resulting blend can be polymer coated. See col. 2, lines 37-40. In response to Applicants' assertion that the reference's "coated crystallites" are "totally different from the spray dried microcapsules of the present invention, notably also in terms of intersectional structure", it is noted that the features upon which applicant relies (i.e., intersectional structure of the microcapsules) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, the Applicants argue: "The spray-dried microcapsule of claim 1,..., require the presence of a fragrance or flavoring ingredient in liquid form." See p. 5 of the reply. In response to Applicants' argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., liquid fragrance materials) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al., the Applicants argue: "Claim 7 is further distinguishable from Murphy due to the recitation 'an aqueous emulsion of the perfuming or flavoring ingredient in the carrier polymeric material.' As noted above, Murphy teaches crystallite organic fragrance compounds (see above). Murphy does not disclose or teach the

spray-drying an emulsion comprising both, a fireproofing agent and a perfuming or flavoring ingredient. In contrast, as noted above, Murphy teaches the coating of a (spray dried) bicarbonate powder onto crystallite fragrances by typical coating procedures, such as fluidized bed coating. As the Examiner correctly states, in addition and as a logic consequence of the different teachings, Murphy does not disclose the step of adding a fireproofing agent to an aqueous emulsion." See p. 5 of the reply. In response, Murphy et al. teach incorporating a particulate filler, such as sodium carbonate into a water-insoluble polymer coating as discussed above. It would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to add the particulate filler (sodium carbonate) to the aqueous emulsion or dispersion of the perfuming ingredient/sodium bicarbonate in the carrier water-insoluble polymeric material with a reasonable expectation of incorporating sodium carbonate into the water-insoluble polymer coating in order to achieve the desired effect of release of the core materials from the capsules.

In response to applicant's argument that Murphy is not concerned with reducing explosiveness of fine particles, the fact that Applicants have recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Sreenivasan Padmanabhan, can be reached at (571) 272-0629.

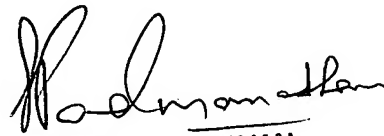
The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Lamm
2/21/06


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER